FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 18 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 292

■

WILLIAM MURRAY ESTEP, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

■

Petitioner's
REPLY TO MEMORANDUM IN OPPOSITION
to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

HAYDEN C. COVINGTON
Attorney for Petitioner

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 292

■

WILLIAM MURRAY ESTEP, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

■

Petitioner's
REPLY TO MEMORANDUM IN OPPOSITION
to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

The Government says that the broad question presented in this case as to the reviewability of the illegality of the draft board's action in defense to the indictment is presented in *Smith* v. *United States* (CCA-4) 148 F. 2d 288, No. 66 October Term 1945 in this court. It is suggested that the court withhold decision on the petition for writ of certiorari until that case is decided.

Petitioner objects to such suggestion.

The court is requested to pass upon the petition for writ of certiorari now and grant the same in order that petitioner's rights can be determined upon the record made in the courts below without regard to the record in the *Smith* case. That case may be decided

on an entirely different question. There it is contended that Smith was erroneously convicted of refusal to submit to induction under an indictment charging him with failure to report for induction. On this question the court is referred to the petition for writ of certiorari in the *Smith* case, pages 11-17, 20-31. (See, also, opinion of the court in the *Smith* case, Record pages 61-64.)

This case presents squarely the issue of whether or not there has been denial of constitutional rights by the draft boards. The Government has conceded in other cases that the scope of inquiry in judicial review of draft-board determinations is confined to instances where there has been a violation of due process of law. The petitioner contends in this case that there has been a rank violation of procedural due process. This brings him within the narrow scope of review said by the Government to be permitted in review of draft-board determinations.

Even though the *Smith* case is to be decided on the ground of reviewability in criminal prosecutions of the actions of draft boards, still the *Smith* case does not present the same issue that is posed in this case. The distinctions and differences between the *Smith* case and this case require that the court overrule the suggestion made by the Government to withhold decision on the petition for writ of certiorari. These considerations should impel the court to act now on the petition for writ of certiorari and grant the same, in order that the questions presented here can be considered along with the questions urged in the *Smith* case.

Respectfully submitted,
HAYDEN C. COVINGTON
Counsel for Petitioner

September 17, 1945